IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

IN RE: RAPHEEL D. BENSON, Debtor **No. 3:18-bk-10224**
Ch. 13

RAPHEEL D. BENSON **PLAINTIFF**

v. **AP No. 3:18-ap-1071**

CONN APPLIANCES, INC. et al. **DEFENDANT**

ORDER

Before the Court is the debtor's *Complaint Seeking Damages in a Core Adversary Proceeding* filed on June 20, 2018, and the *Answer of Conn Appliances, Inc. and Conn Credit Corporation, Inc. to Complaint Seeking Damages* filed on July 20, 2018. In its answer, Conn Appliances, Inc. denies the Court has subject matter jurisdiction over the debtor's complaint because "the claims asserted in the Complaint are subject to a binding and enforceable arbitration clause." In its prayer for relief, Conn Appliances, Inc. asks the Court to enter an order compelling arbitration of the debtor's claims against Conn Appliances, Inc. On August 21, 2018, the Court held a telephonic hearing to hear the parties' arguments related to the Court's Order to Show Cause and why the Court should not compel arbitration of the debtor's claims against Conn Appliances, Inc. For the reasons set forth below, the Court holds this adversary proceeding in abeyance pending arbitration pursuant to the parties' agreement.

In his complaint, the debtor sought the following claims for relief: (1) Violation of the Truth and Lending Act; (2) Violation of Tennessee Consumer Protection Act; and (3) a declaratory judgment declining contract enforceability. Because resolution of the allegations may have some pecuniary effect on the debtor's case, the Court has non-core but related to jurisdiction under 28 U.S.C. § 157. *In re Dogpatch U.S.A., Inc.*, 810 F.2d 782, 786 (8th Cir. 1987).

The Federal Arbitration Act [FAA] supports "the fundamental principle that arbitration is a matter of contract," and, as such, courts must enforce arbitration agreements according to the terms agreed upon by the parties. *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 67 (2010). A party opposing arbitration has the burden of showing "that Congress intended to preclude a waiver of judicial remedies for the statutory rights at issue." *Shearson/American Exp., Inc. v. McMahon*, 482 U.S. 220, 227 (1987). Moreover, the United States Supreme Court conveyed a three factor test, known as the *McMahon* standard, to determine whether the applicable statute or code provision supersedes the FAA's mandate favoring arbitration. *In re Ellswick*, 2016 WL 3582586 at *3 (Bankr. N.D. Ala. June 24, 2016). In *McMahon*, Congress's intent was determined by (1) assessing the text of the statute; (2) reviewing its legislative history; and (3) determining whether "an inherent conflict between arbitration and the underlying purposes [of the statute] exists." *Id*. (internal quotations omitted). In applying the *McMahon* factors, "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration." *Id*. (quoting *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991)). Because there is no evidence that Congress intended to create an exception to the FAA within the statutory text or the legislative history of the Bankruptcy Code, the first two McMahon factors are not applicable to the case at hand. *Id*. (citing *In re Mintze*, 434 F.3d 222, 231 (3d Cir. 2006)). Inasmuch, the Court looks to the third *McMahon* factor to determine whether an inherent conflict exists between arbitration and the Bankruptcy Code. *Id*.

Bankruptcy courts do not have discretion to refuse to compel arbitration without finding that there is an inherent conflict between the bankruptcy code and the Arbitration Act or that arbitration will jeopardize the objectives of the bankruptcy code. *See MBNA Am. Bank v. Hill*, 436 F.3d 104, 108 (2d Cir. 2006); *Ins. Co. of N. Am. v. NGC Settlement Trust & Asbestos Claims Mgmt. Corp.* (*In re Nat'l Gypsum Co.*), 118 F.3d 1056, 1069 (5th Cir. 1997); *see also In re Ellswick*, 2016 WL 3582586 at *3. An inherent conflict is unlikely to be found if the debtor had a legal action or other dispute at the time of her

bankruptcy filing unless such a legal action or dispute could only exist after the commencement of the bankruptcy case. *In re Ellswick*, 2016 WL 3582586 at *4.

At the hearing, the debtor argued that arbitration would affect his opportunity for a "fresh start." The Court cannot fathom why compelling arbitration, as per the parties' agreement, would have any effect on the debtor's fresh start or his opportunity to reorganize his debts. The arbitrator rather than the bankruptcy court will simply be liquidating the claims, which are non-core. Because the Court does not find that the parties' agreement to arbitrate will inherently conflict with or jeopardize the objective of the Bankruptcy Code, the Court will enforce the parties' agreement to arbitrate. After the debtor's claims against Conn Appliances, Inc. are resolved in arbitration, an amended claim, if necessary, may be filed.

Accordingly, the Court will hold the adversary proceeding in abeyance pending arbitration of the debtor's claims in accord with the parties' arbitration agreement.

IT IS SO ORDERED.

Ben Barry
United States Bankruptcy Judge
Dated: 09/13/2018

cc: Sara A. Rogers
Ryan M. Wilson
Mark T. McCarty